



P96005US2B(P260)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of

DONALD R. RUSSELL and
JOSEPH J. KALWARA

Serial No. 09/505,052

Filed February 16, 2000

For: SELF-ADHERING WALKWAY
PADS FOR ROOFING
MEMBRANES AND METHOD
FOR THE APPLICATION
THEREOF TO ROOFS

) Group Art Unit 3635

) Y. Horton, Examiner

) CERTIFICATE OF MAILING

) I hereby certify that this correspondence was
) deposited with the United States Postal Service as first
) class mail in an envelope addressed to: Mail Stop Appeal
) Brief Patents, Commissioner for Patents, P.O. Box 1450,
) Alexandria, VA 22313-1450 on this 22nd day of October, 2004

) Kimberly A. Bright, Secy. to Arthur M. Reginelli

APPEAL BRIEF PURSUANT TO 37 C.F.R. 1.192

BOX AF
ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

Dear Sir:

This is an appeal to the Board of Patent Appeals from the rejections in the non-final Office Action mailed May 5, 2004. The Notice of Appeal was mailed on August 4, 2004. The present appeal is of claims 1-4, 6-8, 10-19, 21-24, and 27-33.

I. REAL PARTY IN INTEREST

The owner of the present patent application is Bridgestone Firestone Diversified Products LLC.

II. RELATED APPEALS AND INTERFERENCES

Appellant and Appellant's legal representatives are not aware of any related appeals or interferences that would directly affect or would be directly affected by, or have a bearing on the Board's decision in the present pending appeal.

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III. STATUS OF CLAIMS

The present application was filed on February 16, 2000 as a divisional of U.S. Patent Application Serial No. 09/039,849 filed on March 16, 1998, now U.S. Patent No. 6,080,458, which is a continuation of U.S. Patent Application Serial No. 08/606,119, filed on February 23, 1996, now abandoned. At the time of filing, the divisional application included claims 1-7. Claims 1-7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,504,136 to Davis et al. in an Office Action dated March 14, 2001. In a Response and Amendment filed June 14, 2001, colorable amendments were made to claims 1-4 and 6-7, and claim 5 was cancelled,¹ and claims 8-27 were added. In view of this Response and Amendment, the Examiner issued a final rejection on November 27, 2001, wherein the Examiner rejected claims 1-4, 6-24, and claim 27, and withdrew from consideration claims 25 and 26.² A Response and Amendment After Final was filed on January 28, 2002, wherein Appellant cancelled claims 25 and 26, added recitation to claims 8 and 27, and made colorable changes to claims, 1, 14, and 15. Together with this Response and Amendment, Appellant filed a Petition Contesting the Issuance of a Final Rejection. An Advisory Action was issued on March 20, 2002, wherein the Examiner maintained the previous rejections but indicated that the amendments were entered. The Advisory Action also include a denial of the Petition. A Notice of Appeal was filed on April 22, 2002, followed by an Appeal Brief on July 22, 2002. The Examiner apparently never filed an Examiner's Reply Brief in response to Appellants' Brief of July 22, 2002. Instead, on December 19, 2002, a non-final Office Action was issued purporting to be in response to Appellants' Petition Contesting the Issuance of a Final Rejection that was file don January 28, 2002. This was not understood by Appellants inasmuch as the Advisory Action dated March 20, 2002, included a denial of that Petition. Nonetheless, this non-final Office Action dated December 19, 2002, included a rejection to claims 1-24 and 27. Appellants

¹ Despite the fact that Appellants cancelled claim 5, the Examiner has indicated in both the Final Rejection and Advisory Action that claims 1-24 and 27 are pending. The Examiner is in error.

² Accordingly, the rejections on Appeal were first presented in a Final Office Action. Appellants filed a Petition contesting the issuance of a Final Rejection, but this Petition was denied. Appellants maintain that the Amendments made in the first Response and Amendment did not warrant a new grounds for rejection. Indeed, the present rejections, although in error, could have been made of the original claims.

subsequently filed a Response and Amendment to this Office Action on March 19, 2003.³ At this time, claims 25 and 26 were cancelled, and claims 27-33 were added. Yet another Office Action was issued on July 1, 2003, and Appellants responded to the same with a Response and Amendment on September 8, 2003. Within this response, claims 1, 3-4, 6, 8, 11-12, 14-16, 18-19, 21-22, and 27 were amended. Also, claim 5, 9, 20, and 25-26 were cancelled. Yet another Office Action was issued on December 8, 2003, wherein the Examiner rejected all of the pending claims. Appellants responded to this Office Action on February 22, 2004, with a Response and Amendment. Within this Response and Amendment, claims 3 and 13 were amended. The Office Action, from which this Appeal is taken, was issued on May 5, 2004, in response to the Response and Amendment filed on February 22, 2004. According to this Office Action of May 5, 2004, all claims stand rejected which include claims 1-4, 6-8, 10-19, 21-24, and 27-33.

In sum, claims 1-4, 6-8, 10-19, 21-24, and 27-33 which include all pending claims, stand rejected.

IV. STATUS OF AMENDMENTS

Appellants believe that all amendments made with the Response and Amendment dated February 22, 2004, have been made. No amendments have been requested after that date.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed invention generally relates to the manufacture and installation of walkway pads that include a factory-applied adhesive.

Walkway pads are known. Conventionally, walkway pads are used to protect the high-traffic areas of roofing membranes. As those skilled in the art appreciate, roofing membranes (e.g. EPDM membranes) are commonly employed to cover and waterproof flat or low-slope roofs. These synthetic membranes are typically employed in lieu of tar or asphalt materials. Because these membranes are subject to damage by traffic (e.g. walking on the roof) or servicing roof-mounted equipment (e.g. service personnel working on fans or condensers), it is important to protect the membrane. Walkway pads are used to protect the roofing membrane from a variety of potential damage and puncture sources.

³ Within this Response and Amendment, Appellants requested that the Examiner clarify the record.

In most situations, the walkway pads are affixed to the roofing membrane so that high-traffic or service areas can be protected from damage. It is therefore important to securely affix the walkway pad to the roof membrane so that the walkway pads will not be uplifted by environmental conditions (e.g. wind), which could scatter them across the roof or off of the roof.

Conventionally, walkway pads are affixed to the roof membrane by using an adhesive tape. The area of the membrane to receive the walkway pad is typically primed, and the adhesive tape is applied to the primed area. The walkway pad is then preferably primed and secured to the membrane by applying the walkway pad to the exposed tape.

This procedure, however, is labor intensive. And, this procedure requires that service personnel ensure that the area of the walkway pad that contacts the adhesive is cleaned and primed. Where service personnel fail to adequately clean and prime the walkway pad, adhesion to the roof membrane may be compromised and fail.

Appellants have alleviated problems associated with the prior art by manufacturing a walkway pad that includes a factory-applied adhesive. By applying the adhesive to the walkway pad prior to use in the field, especially under controlled factory conditions, the probability of securely adhering the tape to the walkway pad is greatly increased. And, because service personnel no longer are required to clean and prime the walkway pad in order to secure it to the roof, and because they are no longer required to apply an adhesive tape to the roof membrane, installation time is expedited.

Appellants have set forth the unique features of its invention by employing the following recitation in each of the independent claims. Claim 27, the following recitation cannot be ignored “where said steps of applying a tape and applying a release paper occurred while the walkway pad remains within the same factory that the walkway pad was constructed.” Claim 16 recites “preparing a self-adhering walkway pad by adhering an adhesive tape to a flat surface of a walkway pad . . . bundling a plurality of walkway pads for delivery . . . delivering the plurality of self-adhering walkway pads.” Claim 8 includes the recitation “providing a walkway pad to a rooftop, where the walkway pad includes an adhesive tape applied to a substantially planar surface of the walkway pad.” Claim 1 recites “where said step of affixing occurs at the location where the pad is manufactured.”

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds for the rejection are as follow:

- (i.) Claims 1-4, 6-7, 32, and 33 are anticipated by U.S. Patent No. 5,563,217 to Davis et al.;
- (ii). Claims 8, 10-15, and 24 are anticipated by U.S. Patent No. 5,563,217 to Davis et al.;
- (iii). Claim 27 is anticipated by U.S. Patent No. 5,563,217 to Davis et al.;
- (iv). Claims 16-19 and 21-23 are obvious over U.S. Patent No. 5,563,217 to Davis et al.;
- (v). Claims 28-31 are obvious over U.S. Patent No. 5,563,217 to Davis et al.

VII. ARGUMENT

All of the Examiner's rejections rely on U.S. Patent No. 5,563,217 to Davis et al. In fact, in each of the Examiner's rejections, the same disclosure within Davis '217 is consistently relied upon. For this reason, Appellants reproduce these sections for convenience and to highlight the shortcomings thereof:

[t]he adhesive tape composition is used in a conventional manner such as by interposing it between the overlapping edges of adjacent roofing membranes to form a conventional roofing lap seam. The overlapping edges of the roofing membranes can be cleaned and primed as desired.⁴

[s]pecimens tested in the peel configuration were prepared as follows . . . After one side of the tape was successfully mated to the primer-coated membrane, the release paper was removed from the other side of the tape and firmly secured by hand to a second piece of primer-coated EPDM membrane along the edge of the long dimension.⁵

[t]he present invention finds utility in, for example, the joining together of other rubber articles including protective liners, agricultural pond liners, fabric-reinforced liners and sheets of modified bitumen, and in the construction and building industry as a laminate for clean sheet and flashing and to secure other building accessories, *i.e., walkway pads*, T-joint covers, pipe boots, batten bars and cover strips, sheets if insulation, deck plates, and the like to the roof of a building.⁶ **[Emphasis added]**

⁴ Davis '217, Column 10, lines 31-35.

⁵ Column 12, lines 6-23.

⁶ Columns 16, line 60 through column 17, line 7.

Before substantively addressing the rejections, Appellants note that the Office Action dated March 14, 2001, had rejected the claims pending at the time in view of U.S. Patent No. 5,504,136 to Davis et al. Claims 1-7 were pending at the time and were, or were amended in the Response dated June 14, 2001, to be similar to those now pending. Claims 8-27 were added with that Response as well. In view of that Response and Amendment, the Examiner withdrew these rejections in favor of sundry rejections in the Office Action dated November 27, 2001. Accordingly, after having spent nearly three years dealing with other prior art references, we have apparently now come full circle. In other words, the Examiner has again rejected the invention over the same prior art (albeit in different name) that the Examiner had previously relied upon and ostensibly abandoned.⁷

Davis '217 teaches adhesive tape compositions. Appellants are very familiar with this technology inasmuch as Appellants are the owner of Davis '217. These adhesive tape compositions are technologically useful particularly in the roofing industry:

[i]t is an object of the present invention to provide a preformed elastomeric polymer-based adhesive tape composition which is particularly adaptable for use as an adhesive tape for joining together cured or uncured flat rubber roof sheeting materials, either unreinforced or fabric-reinforced . . . to laminate a solventless, preformed elastomeric, polymer-based adhesive tape to uncured or cured flat rubber sheets, and uncured or cured flashing to form laminates for covering exposed batten bar strips, which are used to secure the flat rubber sheets on the roof of a building . . . to provide a thin film as described above which can be used to form a seam of variable width and hence strength between two or more flat rubber sheets.⁸

Appellants acknowledge that while the focus of Davis '217 is in the use of these adhesive tape compositions to join or seam the overlapping edges of roofing membranes, these adhesive tape compositions are versatile in other uses. And, their use in conjunction with walkway pads is specifically disclosed as noted above.

But, Appellants are not claiming the use of adhesive tape compositions to secure walkway pads to roofing membranes. This is conventional in the art as acknowledged above.⁹ Indeed, the novelty and patentability of the processes now

⁷ Notably, the disclosure within Davis et al., particularly that disclosure which the Examiner had relied on, is nearly identical to that disclosure that the Examiner is currently relying on within the Davis '217 reference; Appellants have included therewith as Appendix B a Table showing the similarity in disclosure.

⁸ Column 2, lines 43-58.

⁹ See Section V-Summary of the Invention.

claimed focus on the fact that the walkway pads are manufactured by including the adhesive tape as part of the manufacturing process. Appellants are unaware of any prior art or previous methods of producing walkway pads in this fashion. This is true despite the fact that walkway pads have been in existence and have been manufactured and installed using conventional procedures for nearly two decades. As noted above, these procedures simply include preparing a walkway pad at the factory, delivering that pad to the roof, typically priming both the roof and the walkway pad, and employing an adhesive tape to secure the walkway pad to the primed area of the roof.

Each of the independent claims include recitation that serve to define the novelty and patentability of each of the claims and define over Davis '217.

For example, claim 1 recites "where said step of affixing occurs at the location where the pad is manufactured." Despite attempts by the Examiner to suggest that Davis '217 teaches this recitation, there is no teaching. Column 12, lines 19-23 teaches the application of tape to join two primer-coated EPDM membranes as part of a peel-adhesion analytical test, but this teaching does not suggest or imply that walkway pads could be "manufactured" including an adhesive tape.

Claim 8 includes the recitation "providing a walkway pad to a rooftop, where the walkway pad includes an adhesive tape applied to a substantially planar surface of the walkway pad." In order to provide a walkway pad to a rooftop, where the walkway pad includes an adhesive tape applied to a substantially planar surface of the walkway pad, one must first apply that tape prior to the time that the walkway pad arrived at the rooftop. As emphasized several times, conventional practice included delivering the walkway pads to the rooftop and then subsequently applying the adhesive tape at the time the walkway pads are installed. Nothing in Davis '217 contradicts this understanding of conventional practice and the Examiner has supplied no prior art reference to contradict this prior art practice or suggest that the adhesive tape could be applied to the walkway pad prior to delivery to the rooftop.

Claim 16 recites "preparing a self-adhering walkway pad by adhering an adhesive tape to a flat surface of a walkway pad . . . bundling a plurality of walkway pads for delivery . . . delivering the plurality of self-adhering walkway pads." Again, this manufacturing method makes it explicitly understood that the walkway pads have adhesive tape attached thereto as part of a manufacturing process. This manufacturing

process is emphasized by the recitation that after preparation of the self-adhering walkway pad, these self-adhering walkway pads are bundled for delivery and subsequently delivered. The temporal nature of these process steps is apparent in the carefully chosen words of the claim. That is, a walkway pad becomes “a self-adhering walkway pad” upon affixing an adhesive tape thereto. Only after the walkway pad is transformed into a “self-adhering walkway pad,” does claim 16 allow for bundling and delivery.

The Examiner has apparently ignored this distinction in opining that claims 16-19 and 21-23 are obvious over Davis ‘217. According to the Examiner, Davis ‘217 does not disclose steps including bundling and delivering of walkway pads, but the Examiner nonetheless believes that these steps would be inherently included. Besides the fact that the Examiner’s legal analysis appears a bit skewed. The only way that these steps could be inherently included is if Davis ‘217 taught manufacturing walkway pads by including adhesive tape at a place where they would then need to be bundled and delivered (*i.e.*, at the place of manufacture). Again, Davis ‘217 falls miserably short of so teaching. Appellants believe that it is worth noting that the failure of Davis ‘217 to teach these process steps is not at all surprising inasmuch as the focus of Davis ‘217 was on the adhesive tape composition and its uses. Davis ‘217 is not directed toward the manufacture of walkway pads.

Finally, with respect to claim 27, the following recitation cannot be ignored “where said steps of applying a tape and applying a release paper occurred while the walkway pad remains within the same factory that the walkway pad was constructed.” Again, Davis ‘217 does not teach a method for making a walkway pad nor it clearly does it suggest or imply application of an adhesive tape to a walkway pad at the location where the walkway pad is manufactured.

IX. CONCLUSION

Accordingly, the Examiner’s rejection does not address defined features of the Appellants invention. These defined features are not taught or suggested in Davis ‘217, and therefore the Examiner’s rejections of the claimed invention are deemed to be in error.

Per the accompanying Transmittal Sheet, The Commissioner is authorized to charge Deposit Account No. 06-0925 for \$340.00, which is the amount due for the filing of this brief.

Respectfully submitted,



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July 22, 2002



APPENDIX A

1. A method for applying walkway pads to roofing membranes, the method comprising:

affixing a an adhesive tape to one flat surface of a walkway pad, where the tape carries a protective layer of release paper, and where said step of affixing occurs at the location where the pad is manufactured;

removing said release paper from said tape immediately prior to use;

subsequently placing the exposed surface of said tape directly onto the upper surface of the roofing membrane; and,

applying force directly to said walkway pad.

2. The method of claim 1, where said walkway pad comprises asphaltic materials, concrete or rubber-based materials.

3. The method of claim 1, wherein said ~~solids~~ tape comprises EPDM rubber, butyl rubber or blends thereof.

4. The method of claim 1, wherein said walkway pads comprise rubber-based materials and said tape comprises a blend of EPDM and butyl rubbers.

5. (Cancelled)

6. The method of claim 1, further including the additional step of preparing the area of the roofing membrane to which said walkway pad will be applied.

7. The method of claim 6, wherein said step of preparing includes the step of priming the area of the roofing membrane to which said walkway pad will be applied prior to said step of removing.

8. A method for applying a walkway pad to a roofing membrane, said method comprising:

providing a walkway pad to a rooftop, where the walkway pad includes an adhesive tape applied to a substantially planar surface of the walkway pad; and

applying the walkway pad to a roofing membrane, which is located on the rooftop, by placing an exposed surface of the tape directly onto the upper surface of the roofing membrane.

9. (Cancelled)

10. The method of claim 8, where said walkway pad comprises asphaltic materials, concrete or rubber-based materials.

11. The method of claim 8, wherein said tape comprises EPDM rubber, butyl rubber or blends thereof.

12. The method of claim 8, wherein said walkway pads comprise rubber-based materials and said tape comprises a blend of EPDM and butyl rubbers.

13. The method of claim 8, further including the additional step of preparing the area of the roofing membrane to which said walkway pad will be applied.

14. The method of claim 8, where the tape is applied to a flat surface of the walkway pad at the same location where the walkway pad is manufactured.

15. The method of claim 14, where the tape is applied to a flat surface of the walkway pad without priming the flat surface of the walkway pad.

16. A method for providing walkway pads to service personnel who will apply the pads to a roofing membrane, said method comprising:

preparing a self-adhering walkway pad by affixing an adhesive tape to a flat surface of a walkway pad, where said tape carries a protective layer of release paper;

bundling a plurality of self-adhering walkway pads for delivery; and,
delivering the plurality of self-adhering walkway pads to service personnel for application of the walkway pads to a roofing membrane.

17. The method of claim 16, where said walkway pad comprises asphaltic materials, concrete or rubber-based materials.

18. The method of claim 16, wherein said tape comprises EPDM rubber, butyl rubber or blends thereof.

19. The method of claim 16, wherein said walkway pads comprise rubber-based materials and said tape comprises a blend of EPDM and butyl rubbers.

20. (Cancelled)

21. The method of claim 16, where the tape is applied to a flat surface of the walkway pad at the same location where the walkway pad is manufacture.

22. The method of claim 16, where the tape is applied to a flat surface of the walkway pad without priming the flat surface of the walkway pad.

23. The method of claim 16, where the tape is a 100% solids tape.

24. The method of claim 8, where the tape carries a protective layer of release paper; and further comprising the step of removing the release paper from the tape.

25-26 (Cancelled)

27. A method of making a walkway pad, said method comprising the steps of:
constructing a walkway pad within a factory;
applying an adhesive tape to a substantially planar surface of the walkway pad; and

applying a release paper directly to said tape, where said steps of applying a tape and applying a release paper occur while the walkway pad remains within the same factory that the walkway pad was constructed.

28. The method of claim 8, where the walkway pad is about 30 inches square.

29. The method of claim 8, where the walkway pad has a thickness of about 0.25 to about 0.5 inches.

30. The method of claim 8, where the walkway pad has a thickness of about 0.30 inches.

31. The method of claim 8, where the upper surface of the walkway pad is textured.

32. The method of claim 1, where the walkway pad is rubber-based.

33. The method of claim 1, where the roofing membrane is rubber-based.

Col. Ln. 50-57 In Fig. 1 there are shown flat rubber roofing membranes 1 and 2. Each rubber membrane contains primer 3 and 4 Preformed, precured, tacky composition in accordance with the invention containing at least one EPDM rubber which is used to adhere the flat rubber membranes 1 and 2 to each other at the seam.

Col. 10, Ln. 15-17. [a]fter being extruded or other wise preformed into suitable tape extrudates, are heat aged to effect partial crosslinking thereof.

Col. 10, Ln. 34-35. The overlapping edges of the roofing membranes can be cleaned and primed as desired.

Col. 10, Ln. 38-42. [h]owever, cleaning with solvents is generally not required and should be avoided. A suitable primer for use with this invention is Firestone's "QuickPrime," which is based on a butyl rubber formulation incorporating a polyisocyanate compound.

Col. 6, Ln. 35-46 A release paper 18 may be joined to the other tacky surface of the tape to prevent exposure of the surface to dust and the like prior to installation on the roof And is easy to apply to the flat rubber sheet membranes at the job site to adhere the membranes together.

Col. 12, Ln. 17-23. The adhesive composition also includes a cure package containing a curing agent and at least one organic accelerator in order to effect at least partial crosslinking or curing of the adhesive composition prior to its use as a seam tape. The composition is typically heat aged for a periods of time to insure crosslinking.

Col. 14, Ln. 8-10 The overlapping edges of the roofing membranes can be cleaned with soap and water or the appropriate solvent to remove any grease, oil or other contaminants

Col. 14, Ln. 17-22. Where a primer is used, one example suitable for use with this invention is Firestone's "QuickPrime." Peel adhesion, seam shear strength, and static or dead-load shear strength are maximized by priming the overlapped edges of the two flat rubber sheets prior to forming the seam.



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Col. 12, Ln. 18-23. After one side of the tape was successfully mated to the primer-coated membrane, the release paper was removed from the other side of the tape and firmly secured by hand to a second piece of primer-coated EPDM membrane along the edge of the long dimension.

Col. 12, Ln. 42-44. [w]ere individually mated by rolling a 2.75 inch wide, 15 lb. steel roller at least four times over the surface of the seam using a back and forth motion.

Col. 17, Ln. 3-7. [t]o secure other building accessories, i.e., walkway pads, T-joint covers, pipe boots, batten bars and cover strips, sheets if insulation, deck plates, and the like to the roof of a building.

U.S. Patent No. 5,504,136

Col. 15, Ln. 53-57. After successfully mating the tape to the primer-coated membrane, the release paper was removed from the other side of the adhesive tape composition and firmly secured by hand to a second piece of primer-coated EPDM membrane.

Col. 16, Ln. 1-5. Each test pad then was individually mated by rolling a 2.75 inch wide, 15 pound metal roller in back and forth motion at least four times over the surface of the seam.

Col. 18, Ln. 40-44. [u]se in the building and construction industry as laminates for clean sheet and flashing and to secure other building accessories such as walkway pads, pipe boots, deck plates, T-joint covers and the like.

APPENDIX B



P96005US2B(P260)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of

DONALD R. RUSSELL and
JOSEPH J. KALWARA

Serial No. 09/505,052

Filed February 16, 2000

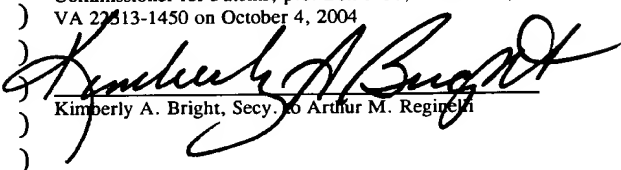
For SELF-ADHERING WALKWAY PADS
FOR ROOFING MEMBRANES AND
METHOD FOR THE APPLICATION
THEREOF TO ROOFS

) Group Art Unit 3635

) Y. Horton, Examiner

) CERTIFICATE OF MAILING

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) Kimberly A. Bright, Secy. to Arthur M. Reginelli

TRANSMITTAL SHEET

Enclosed are the following documents:

Appeal Brief (w/attached Certificate of Mailing)

Appendix A

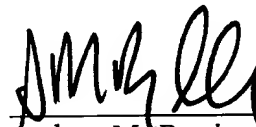
Appendix B

Return Receipt Postcard

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 06-0925.

Respectfully submitted,



Arthur M. Reginelli, Reg. No. 40,139

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October 4, 2004